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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1993

Addendum

BELARUS 1/

[Original Russian]
[1 July 1997]

1/ This document contains information submitted by the Government of Belarus to supplement its fourth periodic report (CCPR/C/84/Add.4).

1. In view of the fact that since the submission of the fourth periodic report by Belarus (11 April 1995) there have been significant changes in the country's legislation and its internal political life, the Government of the Republic of Belarus is submitting the following supplement to that report, covering the period from April 1996 to April 1997.

2. On 24 November 1996, a nationwide referendum was held in the Republic of Belarus, in which one of the questions concerned additions and amendments to the 1994 Constitution of the Republic of Belarus, put forward at the initiative of Mr. A.G. Lukashenko, President of the Republic of Belarus.

3. In the referendum, over 70 per cent of the population voted in favour of the new text of the Constitution. On 26 November 1996, the Supreme Council of the Republic of Belarus, with a quorum present, adopted the Act on the National Referendum of 24 November 1996 in the Republic of Belarus, by which it confirmed that the referendum was binding in nature and required governmental, public and other organizations, officials and citizens of the Republic of Belarus to be guided in their activities by the decisions adopted in the referendum.

4. In accordance with article 143 of the new version of the Constitution of the Republic of Belarus, the Supreme Council and the President formed a House of Representatives from among the deputies in the Supreme Council who had been elected by the day on which the date for the referendum was fixed. The deputies retained their powers for the period specified in the new version of the Constitution (four years).

5. The upper chamber of the Parliament - the Senate - was set up in accordance with article 91 of the Constitution: the regions and the city of Minsk each elected eight members of the Senate by secret ballot at meetings of local councils of deputies at the base level in each region and in the city of Minsk. Eight of the 64 members of the Senate were appointed by the President of the Republic of Belarus.

6. On 27 November 1996, with the entry into force of the 1994 Constitution of the Republic of Belarus with the amendments and additions adopted in the referendum and with the completion of the formation of the House of Representatives of the National Assembly, the Act on the Abrogation of the Powers of the Supreme Council of the Republic of Belarus of the Thirteenth Convocation was adopted.

7. In view of statements by some politicians and international organizations to the effect that the conditions in which the referendum took place deprive it of any legitimacy, it would seem important to explain the following points. The holding of a referendum on the question of amendments and additions to the 1994 Constitution was entirely lawful and was based on the terms of the Constitution itself, which specifically provided for the possibility of holding a referendum for this purpose. In initiating the referendum, the President of the Republic of Belarus was placing the matter before the only source of State power and possessor of sovereignty - the people.

8. In the period leading up to the referendum, there were isolated violations of the law, which, however, did not affect the legal basis for the referendum or have any influence on the extent to which it was legitimate. Neither the Central Electoral Commission on Elections and the Holding of National Referendums nor the Procurator's Office of the Republic of Belarus found any serious violations calling in question the legality of the results of the referendum.

9. Thus the National Assembly of the Republic of Belarus enjoys the necessary democratic legitimacy, acts within the limits of its powers and exercises legislative power on the basis of a genuine division of powers. The National Assembly is a representative and legislative body performing the function of control over the executive power.

10. As a result of the adoption of the above-mentioned additions and amendments to the 1994 Constitution of the Republic of Belarus, some passages in the report (CCPR/C/84/Add.4) are out of date and need to be amended as follows:

11. Paragraph 9: The representative and legislative organ of the Republic of Belarus is the Parliament - the National Assembly of the Republic of Belarus. The Parliament consists of two chambers - the House of Representatives and the Senate. The House of Representatives is composed of 110 deputies. The election of deputies is carried out in accordance with the law, on the basis of universal, free, equal and direct suffrage and by secret ballot. The Senate is the chamber of territorial representation. The term of the Parliament is four years (arts. 90-105).

12. Paragraph 10: The Head of State and guarantor of the Constitution of the Republic of Belarus and the rights and liberties of man and citizen is the President of the Republic of Belarus, who is elected directly by the people of the Republic of Belarus for a term of five years (arts. 79-89).

13. Paragraph 14: Executive power in the Republic of Belarus is exercised by the Government - the Cabinet of Ministers of the Republic of Belarus, the central body of State administration. The Government is accountable in its activity to the President of the Republic of Belarus and responsible to the Parliament of the Republic of Belarus (art. 106).

14. Paragraph 16 of the report is no longer applicable.

15. Paragraph 19: Section VI of the Constitution deals with matters relating to the work of the Procurator's Office and the Supervisory Authority.

16. Paragraph 20: The adoption of the 1994 Constitution instituted, for the first time in the country's history, control over the constitutionality of normative instruments, which is exercised by the Constitutional Court. After the introduction into the Constitution of the Republic of Belarus of the amendments and additions adopted in the national referendum of 4 November 1996, the provisions governing the activity of the Constitutional Court are to be found in article 116, in chapter 6, "The Courts". The Constitutional Court of the Republic of Belarus is made up of 12 judges from among highly qualified specialists in the field of law, who as a rule have a

higher academic degree. Six of the judges of the Constitutional Court are appointed by the President of the Republic of Belarus and six are elected by the Senate. The Chairman of the Constitutional Court is appointed by the President of the Republic of Belarus with the agreement of the Senate.

17. Paragraph 23: The Constitutional Court produces rulings on:

(a) The conformity of laws, decrees, edicts of the President, international treaties and other undertakings of the Republic of Belarus with the Constitution and with instruments of international law ratified by the Republic of Belarus;

(b) The conformity of legislative instruments of inter-State entities of which the Republic of Belarus is a member and of edicts of the President of the Republic of Belarus issued in pursuance of the law with the Constitution, instruments of international law ratified by the Republic of Belarus, acts and decrees;

(c) The conformity of decisions of the Cabinet of Ministers and instruments of the Supreme Court, the Supreme Economic Court or the Procurator-General with the Constitution and with instruments of international law ratified by the Republic of Belarus, acts, decrees and edicts of the President;

(d) The conformity of instruments of any other State organ with the Constitution and instruments of international law ratified by the Republic of Belarus, laws, decrees and edicts (art. 116 of the Constitution).

18. Paragraph 24 is no longer applicable.

19. Paragraph 31: An important safeguard for the protection of the constitutional rights and freedoms of citizens of the Republic is the fact that a decision to declare a state of emergency in the territory of the Republic of Belarus or in individual parts of it or to declare martial law is taken by the President of the Republic of Belarus only in the circumstances specified in article 84 (22) and (29) of the Constitution of the Republic of Belarus, with the condition that the decision in question must be submitted within three days for confirmation by the Senate. Under the Constitution it is forbidden to amend or supplement the Constitution during a state of emergency (art. 139, second sentence).

20. Paragraph 38 is no longer applicable.

21. Addition to paragraph 39: In addition, in 1966 a further guarantee of the exercise and protection of human rights was embodied in the Constitution. Under the Constitution, any citizen has the right, in accordance with instruments of international law ratified by the Republic of Belarus, to appeal to international organizations for the protection of his rights and freedoms if all domestic remedies have been exhausted (art. 61).

22. Paragraph 50: Article 137 states unambiguously that the Constitution has the supreme legal force, so that laws, decrees, edicts and other instruments of State bodies are to be promulgated on the basis of and in

accordance with the Constitution. A hierarchy is also established for normative instruments of the Republic: if there is a discrepancy between a law, decree or edict and the Constitution, the Constitution shall apply. Where there is a discrepancy between a decree or edict and a law, the law shall apply only when the powers for the promulgation of the decree or edict were provided for by the law.

23. Paragraph 51: The words "article 147" should be replaced by "article 138" and the words "article 148 the minimum period of time over which they must be considered" by "article 139 the minimum interval of time between two debates by the Parliament on a law on amending and supplementing the Constitution".

24. Paragraph 52: Article 140 states that "The Constitution, laws on amendments and addenda thereto and on the entry into force of the said laws and instruments on the interpretation of the Constitution shall be deemed to have been adopted where not less than two thirds of the full membership of each chamber of the Parliament have voted in favour of them".

25. Addition to paragraph 53: Sections I, II, IV and VIII of the Constitution may be amended solely by referendum (art. 140, last sentence).

26. Paragraph 54: Article 8 of the Constitution establishes the supremacy of the universally acknowledged principles of international law and the obligation of the State to ensure that its laws comply with those principles. The third sentence of article 8 contains a provision concerning the supremacy of the Constitution of the Republic of Belarus: "The conclusion of international treaties that are contrary to the Constitution shall not be permitted". As a result of the national referendum, a new provision was added to article 8 to the effect that it was permissible for the Republic of Belarus to join inter-State entities on a voluntary basis.

27. Amendment to paragraph 64: The words "an independent organ accountable to the Supreme Council of the Republic of Belarus having supreme authority for the effecting on behalf of the State of supervision of the precise and uniform enforcement of the law" should be replaced by "an independent organ accountable to the Parliament of the Republic of Belarus effecting on behalf of the State supervision of the enforcement of the law".

28. The Citizens' Communications Act was adopted on 6 June 1996. It lays down the procedure for citizens to lodge proposals, statements and complaints with officials of State organs, organs of public associations, institutions, organizations and enterprises, regardless of their form of ownership, and the procedure for the consideration of such proposals, statements and complaints. Article 3 of the Act establishes the right to lodge an application for the protection of the rights and interests of other persons who are not in a position to lodge a proposal, statement or complaint personally. Article 5 of the Act makes it an obligation for heads of organs, institutions, organizations and enterprises to receive citizens personally at least once a month. They have no right to refuse to receive people personally on matters within their competence. Article 6 of the Act forbids officials to release information that has become known to them in connection with the consideration of communications if that may entail infringement of citizens' rights and

legitimate interests. Article 8 establishes the time limit for the consideration of a communication, "not later than one month from the date of its receipt", and if the communication does not require any further investigation and research, not more than 15 days. When it is necessary to carry out special investigations and obtain further material, the official can extend the time limit for the consideration of the communication by not more than two months, notifying the citizen to that effect at the same time. The same provision gives the citizen the right, if he does not agree with the decision taken on the communication, to appeal against it to a higher organ, institution, organization or court in accordance with the procedure established by law. Of great importance for the protection of individual rights is the provision in article 10 of the Act requiring officials, when deciding to comply with a communication and reply to the person concerned "to take the necessary measures to restore citizens' rights and legitimate interests that have been violated" and "to decide the question of the responsibility of the persons through whose fault the violations were allowed to occur". A citizen who has lodged a complaint "is entitled to have access to the material relating to its investigation insofar as that does not affect the rights of other citizens and does not conflict with the legal requirements concerning the preservation of State secrecy and other kinds of secrecy protected by law" (art. 12). The Act makes it an offence to violate the legislation regarding citizens' communications and gives them the right to compensation for damage resulting from violation of legal requirements in the consideration of their communications: "Any official of an organ, institution, organization or enterprise who is guilty of unlawfully refusing to consider an application, failing without good reason to comply with the time-limit for the consideration of a communication, taking a decision which is against the law, releasing information that has become known to him as a result of consideration of a communication if that infringes citizens' rights and legitimate interests, or harassing citizens and members of their families for submitting a communication in accordance with the established procedure shall be liable to proceedings under the law of the Republic of Belarus" (art. 13). Citizens are entitled to demand compensation for damage to property and material compensation for moral injury from organs, institutions, organizations or enterprises whose officials have permitted any violation of their rights and freedoms in the consideration of their communications. Disputes about compensation for citizens' material loss and moral injury are to be settled in the courts.

29. Between April 1996 and April 1997, a number of legislative instruments of the Republic of Belarus amended and supplemented the Criminal Code of the Republic of Belarus. Thus the Act of the Republic of Belarus on Additions and Amendments to Certain Legislative Instruments of the Republic of Belarus as a Result of the Adoption of the Act on Copyright and Related Rights of 16 May 1996 amended article 138 of the Criminal Code of Byelorussia making it an offence to violate copyright and related and inventors' rights. The Act on Additions to the Criminal Code and Code of Criminal Procedure of the Republic of Belarus of 21 June 1996 introduced new articles into the Criminal Code making it an offence to compel anyone to donate organs and tissue for transplantation or to violate the regulations governing the transplantation of human organs and tissue. The Act on Amendments and Additions to the Criminal Code and Code of Criminal Procedure of the Republic of Belarus of 26 June 1996 added a note to article 86 of the Criminal Code under which near relations and

members of the family of a person who has committed a crime are not liable to criminal proceedings for failing to report crimes, including crimes against the State, or for refusing to give evidence. The same Act, in a note to article 166 of the Criminal Code, gives a definition of "official occupying a responsible position", presents a new version of article 166.1 of the Criminal Code, "Failure to carry out duty", and introduces into the Code a new article 167.1, "Compelling a person not to comply with decisions of the Constitutional Court of the Republic of Belarus". On 10 February 1997 new article 194.3, "Malicious violation of the rules of administrative supervision", was introduced into the Criminal Code of Belarus, and the Act on Administrative Supervision of Persons Released from Places of Imprisonment of 10 February 1997 laid down the conditions and procedure for establishing and exercising such supervision. In November 1994 changes were made to the procedure and conditions for parole and replacement of a penalty by a less severe one (arts. 51 and 51.1 of the Criminal Code) and parole combined with compulsory employment (art. 51.2 of the Criminal Code).

30. On 17 May 1997 substantial amendments were made to the Code of Criminal Procedure of the Republic of Belarus relating to the protection of persons involved in a trial and members of their families and the use of listening devices and other technical devices. In particular, the organs of inquiry and investigation, the procurator and the court, "where there is sufficient evidence that a victim, witness, expert and other persons involved in a trial and members of their families are exposed to a real threat of murder or violence, destruction of or damage to property, or other illegal acts", are required "to take the measures provided for by law to ensure the safety of these persons and their property" (art. 60.2). Such safety measures include: withholding of information about a person's identity, use of technical means of monitoring and listening to telephone and other conversations, personal protection, protection for a person's house and property, changing of identity card details and replacement of documents, holding of judicial proceedings in camera, prohibition of the release of information, and application of other measures that do not conflict with the existing legislation (art. 60.3). Under article 60.12 anyone who fails to fulfil his duties with regard to the protection of persons involved in a trial is liable to proceedings: "A member of the staff of the inquiry organ, the investigator, the procurator, the judge or any official of the organ responsible for safety who is guilty of not taking safety measures, or doing so inadequately, or releasing information about them, shall be liable to disciplinary proceedings and, if serious consequences ensue, to criminal proceedings". Under the new version of article 66 of the Code of Criminal Procedure, close relatives and members of the family of a person who has committed a crime may not be questioned as witnesses in criminal cases, nor may ministers of religion about circumstances which have become known to them in connection with the performance of their religious duties.

31. On 13 January 1995 the Act on the Press and Other Mass Media was adopted, followed on 7 June 1996 by the Act on Additions to the Act of the Republic of Belarus on the Press and Other Mass Media. The Act is based on fundamental principles of the Constitution of the Republic of Belarus: freedom of opinion and belief and freedom of expression. Monopolization of the mass media is forbidden. Citizens of the Republic of Belarus are entitled to establish mass media and to own, use and dispose of them. At 1 May 1997

there were 905 periodicals registered in the country (632 newspapers, 225 magazines, 48 bulletins), of which 607 were not State-owned. Periodicals are published in Belarusian, Russian, English, Ukrainian, Polish, French and German. The State Committee on the Press in the Republic of Belarus is responsible for seeing that the law is observed in the press. According to article 1 of the Constitution, the Republic of Belarus shall "defend its independence and territorial integrity and its constitutional system and safeguard legality and law and order". For that reason the Government of the Republic of Belarus attaches particular importance to violations of article 5 of the Press Act (fomenting national, social, racial or religious intolerance or conflict, incitement to change the social order by violence, divulging of information which is a State secret, infringement of citizens' moral integrity, honour and dignity) and of article 40 (publication of information that is not objective and does not correspond to the facts). As a rule, violations of these articles are committed by non-State publications. During 1996 and the first quarter of 1997, the State Committee on the Press sent warnings under articles 5 and 40 of the Press Act to the editors of the newspapers Svaboda, Pagonya, Birzhi i banki. Belorusskaya delovaya gazeta, Nasha niva, Beresteisky krai, Belaruskaya maladzezhnaya. The articles of the Press Act most frequently violated are articles 11, 26 and 27 (publication of printed mass media without registering the publication or re-registering it in accordance with the Press Act, publication of incomplete information on the publication, failure to fulfil the requirement to send out compulsory free copies). For example, in the first quarter of 1997, the State Committee on the Press sent 95 warnings to the editors of different publications concerning violations of these articles of the Act.

32. In 1994, 24 persons were sentenced to the death penalty, in 1995 - 37, and in 1996 - 29. Four persons sentenced to death subsequently had their sentences commuted to 20 years' imprisonment by an edict of the Presidium of the Supreme Council (Parliament) of the Republic of Belarus in 1992.

33. The courts of the Republic of Belarus convicted 53,401 persons in 1994, 58,819 in 1995 and 61,933 in 1996. Under the Act on the Amnesty on the Occasion of the Fiftieth Anniversary of Victory in the Great Patriotic War of 1941-1945, a total of 1,345 persons were released. Under the Act on Amnesty for Certain Categories of Offenders of 2 November 1996, 1,639 persons were released.